IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

WRIT PETITION NO.1832 OF 2000

Saraswati Dalmia & Ors. ..Petitioners.

Vs.

Collector of Bombay & Ors. ..Respondents.

WITH

WRIT PETITION NO.657 OF 2002

M/s.Suresh Estate Pvt. Ltd. ..Petitioners.

Vs.

State of Maharashtra & Ors. ..Respondents.

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Mr.Rohit Kapadia with Mr.Chetan Kapadia, Pradeep Sancheti and Jeetendra Jain i/b H.K.Sudhakara for the Petitioners.

Mr.Shekhar Naphade with Ms.Gita Shastri for the State.

Mr.S.A.Abhyankar i/b Law Charter for Respondent No.6.

Ms.Vandana Mahadik i/b Bilawala & Co

for Respondent Nos.7 to 47.

Mr.Navneet Shah i/b N.K.Mudnaney for Respondent No.48.

Mr.Vishal Phal i/b Shantilal & Co. for the Intervenor.

Mr.G.N.Pandit for the Intenvenor.

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CORAM : DR.D.Y.CHANDRACHUD, J.

Date of Reserving the Judgment : 12th July, 2004

Date of Pronouncing the Judgment:18th August,2004.

JUDGMENT :

I

1. The subject matter of the two petitions before the Court in proceedings under Article 226 of the Constitution is land, to be more precise three parcels of land bearing CTS Nos.2/65, 66 and 67 situated within the Lower Parel Division, Haines Road, Mahalaxmi, Mumbai 400 011. The first Petition arises out of an order of eviction passed by the Collector, Mumbai Suburban District on 18th August, 1997 in exercise of powers conferred by

Section 53 of the Maharashtra Land Revenue Code, 1966. The order of eviction has been affirmed in appeal by the Additional Commissioner and in revision by the Government of Maharashtra. The Collector, in appeal the Additional Commissioner and in revision the State Government have concurred in holding that the term of the original leases expired on 31st October, 1985; that the purported assignment by Petitioners 1 to 5 in favour of Petitioner No.6 on 19th April, 1988 must, therefore, be disregarded and that within the term of the original lease there was no exercise of the right of renewal. The order of eviction is questioned in the first petition. In the second Petition, there is a challenge, to an order dated 31st October, 2001 passed by the Minister for Revenue in the Government of Maharashtra declining to allot the land on a fresh lease to Petition No.6. For the reasons which I now propose to set out, I have come to the conclusion that the Petitioners are not entitled to the reliefs which have been sought in these proceedings under Article 226 of the Constitution.

II

2. On 3rd October, 1936 and 23rd May, 1951 the Governor of Bombay executed Deeds of lease in favour of Sir Shapurji Broacha Mills Ltd., for a period of 50 years with effect from 1st November, 1935 till 31st October, 1985 with a covenant of renewal for a further period of 50 years on the same terms, subject to a variation of lease rent and a one time right of disposition without the previous sanction of the lessor. The Mills went into liquidation and on 2nd January, 1953 a deed of assignment was executed between the liquidators Dalmia Cement and Paper Marketing Company Limited as confirming party and Bharat Insurance Co. as assignee by which the lessee assigned and transferred its interest in the land in favour of the assignee for the remainder of the lease.

3. By a notification dated 20th June, 1960, the business of Bharat Insurance Company came to be transferred to and vested in the Life Insurance Corporation of India Limited (LIC). LIC applied to the Government of Maharashtra for a sub division of C.S. Nos. 65(Part) and 67 into three plots which is stated to have been granted on condition that

LIC should first surrender possession of the land. Accordingly, LIC executed a Deed of surrender on 28th July, 1960. On 28th July, 1964, the Government of Maharashtra entered into three separate lease deeds in favour of LIC. A copy of one of the lease deeds in respect of cadastral survey 2/65 is annexed to the first petition. The term of the lease was to expire at the end of a period of 50 years on 31st October, 1985. Among the covenants that were assumed by the lessee was one under Clause 2(c) of the lease deed which provided thus :

> "(c) Not to make any such disposition of the said land or any part thereof as shall, have the effect of vesting the same for the said term or any part thereof in other than one and the same party or parties at one time without the previous sanction of the Lessor or the Collector Provided That nothing herein contained shall be taken to affect or prejudice the right of the Lessee to sublet any portion of the said land hereby demised."

Clause (6) of the Deed contained a power of renewal which was in the following terms :

> "6. If the Lessee shall have duly performed and observed the covenants and conditions on the part of the Lessee hereinbefore contained and shall at the end of the said term hereby granted be desirous of receiving a new Lease of the demised premises and of such desire shall give notice in writing to the Lessor before the expiration of the term hereby granted the Lessor shall and will at the cost and expense in every respect of the Lessee grant to the Lessee a new Lease of the demised premises for a further term of fifty years and with the covenant provisos and stipulations hereinbefore contained including this covenant for renewal save and except that on every such renewal such yearly rent shall be reserved whether the same be decreased or increased as the Lessor shall determine having regard to the situation of the land and the value of land in the vicinity at the time of such

renewal."

4. On 23rd June, 1970 a Deed of assignment came to be executed by which the leasehold rights of LIC in respect of the lands described therein were assigned in favour of Ramkrishna Dalmia, the predecessor-in-title of Petitioners 1 to 3. The Governor of Maharashtra as lessor accepted the assignment for the residuary period of the lease and recorded the transfer in the name of the assignee. The assignee expired on 26th September, 1978. Petitioners 1 to 5 are his heirs and representatives, claiming an entitlement to the leasehold rights in respect of the land in question. On 19th April, 1988, Petitioners 1 to 5 sought to further assign their right, title and interest in favour of Petitioner No.6, Suresh Estate Private Limited, claiming inter alia that the original assignee, Ramkrishna Dalmia was "absolutely seized and possessed" and was entitled to the land bearing CTS Nos.2/65, 66 and 67. Significantly, the deed of assignment is silent on the purported exercise of the right of renewal by the original assignee during his life time or upon his death by his heirs and representatives.

According to the Petitioners, rent has been accepted by the Government of Maharashtra after 31st October, 1985.

5. On 24th February, 1997 the Collector, Mumbai Suburban District addressed a notice to show cause to the Petitioners stating that under the terms of the original lease dated 28th July, 1964, LIC was entitled to a one time disposition which was exercised by the deed of assignment dated 23rd June, 1970 in favour of Ramkrishna Dalmia. The lease, it was noted had expired on 31st October, 1985 and the transaction in favour of Petitioner No.6 of 19th April, 1988 was alleged to be illegal in the absence of the permission of the Government. The Collector stated that it was obligatory to surrender the leased land on the expiry of the term of the lease. No reply having been sent to the notice, the Collector addressed a reminder on 27th March, 1997. Petitioners 1 to 5, the heirs of the original assignee submitted no reply thereto. A reply dated 5th April, 1997 was addressed by Petitioner No.6 to the Collector. In the reply it was stated that by an indenture of assignment dated 19th April, 1998, the executors of the estate of

Ramkrishna Dalmia had sold, assigned and conveyed the property to the Sixth Petitioner at one and the same time and that there was no violation of Clause 2(c) of the lease deed. Then it was sought to be alleged that prior to the expiry of the lease, the original lessor had "applied for the extension of the lease" and which had purportedly been entertained by the office of the Collector by granting a renewal dated 13th March, 1986. Without prejudice it was also contended that a renewal of the lease is deemed to have been granted by conduct. A personal hearing was sought before the Collector.

6. The Collector passed an order dated 18th August, 1997 holding that the term of the leases had expired on 31st October, 1985. The heirs of Ramkrishna Dalmia had after the expiry of the lease unauthorizedly and illegally purported to assign their interest on 19th April, 1988 at and for a consideration of Rs.22 lacs. The explanation was consequently rejected by the Collector in his order.

7. Aggrieved by the order of the Collector, the

Petitioners filed a writ petition before this Court under Articles 226 and 227 of the Constitution. The writ petition was disposed of as withdrawn by a learned Single Judge of this Court Mr. Justice R.M. Lodha on 12th January, 1998. The Learned Judge recorded that after the petition was argued, counsel for the Petitioners had sought liberty to withdraw the petition in order to challenge the impugned order by filing an appeal under Section 247 of the Land Revenue Code. In pursuance of the order of the Court, an appeal was thereafter filed before the Additional Commissioner which was rejected on 12th June, 1998. The order of the Appellate Authority has been confirmed in revision on 4th May, 2000 by the Minister for the Revenue in the State Government. In pursuance of the aforesaid order, a communication has been issued to Petitioner No. 6 on 31st October, 2000 declining to issue an order of allotment. These orders form the subject matter of challenge before the Court.

III

8. Three submission have been urged on behalf of the Petitioners : (i) The order of the Collector

dated 18th August, 1997 has been passed without an opportunity of a personal hearing having been granted to the Petitioners and the grant of a personal hearing at the appellate and revisional stages would not cure this defect in view of the judgment of the Supreme Court in Institute of Chartered Accountants of India v. L.K. Ratna ((1986) 4 SCC 537); (ii) The order of the Collector acting as a quasi judicial authority was coloured or influenced by the dictates of his higher authorities; and (iii) The orders were actuated by malafides and have been passed at the behest of Armstrong Smith Limited, the Sixth Respondent, who is one of the tenants.

9. These submissions may now be considered.

IV

10. Under the terms of the lease dated 28th July, 1964 a right of renewal was conferred upon the lessee, LIC, by Clause 6 of the indenture. On 23rd June, 1970 LIC assigned to Ramkrishna Dalmia its leasehold interest for the remainder of the period of lease. The basic and fundamental question which

has to be considered by the Court is as to whether there was in fact an exercise of the power of renewal by the assignee before the expiration of the term of the lease.

11. Petitioners 1 to 5 who are the heirs and legal representatives of the assignee submitted no reply to the show cause notice dated 24th February, 1997. The reply submitted by Respondent No.6 warrants close scrutiny because apart from setting out the provisions of clause 2(6) of the original lease deed, what was sought to be established was that the original lessor had "applied for the *extension* of the lease". The reply submitted by Petitioner No.6 is besides being vague, completely and totally silent in regard to the exercise of the power of renewal by the assignee or his heirs before the expiration of the term of lease. Indeed, if the right of renewal had been exercised, it is inconceivable that the reply to the show cause notice would not contain a reference to the exercise of the right or to a communication evincing the exercise of the right of renewal.

12. The document by which Petitioners 1 to 5

purportedly assigned their interest to Petitioner No.6 is of 19th January, 1988 after the expiry of the term of the lease on 31st October, 1985. Significantly, this document is also completely silent in regard to the exercise of the right of renewal during the term of lease. Though the deed of assignment of 19th January, 1988 states that the assignee was absolutely seized and possessed of the land, the deed makes no reference to the exercise of any right of renewal.

13. Indeed as already noted earlier, the case that was sought to be established in the reply to the notice to show cause was that the original lessor had applied for the extension of the lease. That an extension of lease stands on a completely different footing from a renewal of a lease is well settled. In Provash Chandra Dalui v. Biswanath Banerjee (AIR 1989 SC 1834), the Supreme Court held that an extension ordinarily implies the continued existence of something to be extended - to extend means to enlarge, expand, lengthen, prolong or to carry out further than its original limit. In the case of a renewal a new lease is required whereas, in the case of an extension the same lease

continues in force during an additional period by the performance of a stipulated act. Petitioner No.6 is a corporate entity and, as a builder and developer, it can be only expected that this entity was conscious of the language which was carefully used in reply to the show cause notice. What was sought to be established was that there was an extension of the lease. What was sought to be contended was that not that there was a renewal of the lease, but that there was an extension. But apart from semantics, the reply was completely silent even in regard to any alleged renewal of lease. There was no reference to any communication of renewal nor indeed to any date on which the right of renewal was exercised.

14. These circumstances assume a great deal of significance in the present case, because on behalf of the Petitioners reliance is sought to be placed on certain documents which according to them establish that the Government had in fact renewed the lease in favour of Petitioner No.6. To these documents, I must now turn. The first document is a letter dated 21st February, 1979 purported to have been addressed by the Collector to one R.H.

Namavati. The letter is in response to an alleged letter dated 8th February, 1978 and states that the revised ground rent at the time of the renewal of the leases in respect of C.S. Nos.2/65, 66 and 67 will be fixed at 8% per annum of the full market value which would be prevalent at the time of renewal.

15. In these proceedings, a categoric statement has been made in the affidavit dated 10th November, 2000 of Shri.Rajendra V. Nimbalkar, Resident Deputy Collector and Additional District Magistrate that the alleged letter dated 21st February, 1979 is not in the office record of the Collector. Now admittedly the original of the letter is not forthcoming. What is produced and furnished by the Petitioners' advocate is a xerox copy. The letter is not addressed to any of the Petitioners or to an authorized person. Above all, it is impossible to conclude from the aforesaid letter that there was infact the exercise of the right of renewal on the part of the assignee or anyone claiming through him.

16. The second document is an alleged letter dated

18th January, 1984 by the executors of the estate of late Ramkrishna Dalmia purporting to exercise the right of renewal. What is produced by the Petitioners is a xerox copy of an alleged office copy of the letter. Even the office copy of the letter is not forthcoming. The Resident Deputy Collector in his affidavit noted above has stated that there is no record of the notice dated 18th January, 1984 in the office of the Collector. Moreover, it is stated that there is no reason why such a letter should have been allegedly addressed to the Superintendent of the City Survey & Land Records, Mumbai, since a communication of renewal would have been ordinarily addressed to the lessor or the Collector of Mumbai City. I find a considerable degree of merit in what has been stated on behalf of the Respondent State. There is to my mind a grave degree of doubt in regard to the authenticity of the alleged letter, grave enough for the Court to disregard the authenticity of the alleged letter. Significantly, the deed of assignment by Petitioners 1 to 5 in favour of Petitioner No.6 is silent in regard to the exercise of the right of renewal. If indeed, a right of renewal had been exercised, it would have been

natural to expect that the document by which Petitioners 1 to 5 assigned their interest in favour of Petitioner No.6 would make a reference to it. Then Petitioners 1 to 5 have filed no reply to the notice to show cause. The reply which has been filed by Petitioner No.6 is totally silent on the exercise of a purported right of renewal.

17. Petitioner No.6 has thereafter sought to rely upon two letters dated 21st July, 1984 and 24th September, 1984. These letters are by Petitioner No.6 to the Superintendent, City Survey & Land Records and refer to a letter dated 29th June, 1984 of Petitioner No.6 seeking to renew the lease. Petitioner No.6 claims therein that Petitioner No.6 has exercised an option of renewal. This does not match up to the contention now sought to be advanced that the executors of the estate of the original assignee had exercised the right of renewal. The reliance which is sought to be placed on a file note dated 19th November, 1986 is again a self-serving attempt to establish a case of renewal, where indeed such a case is unstatable in the facts of the present case.

18. Therefore, having regard to the material which has been produced on the record, it is impossible for the Court to accept the contention of the Petitioners that there was a renewal of lease before 31st October, 1985. The Petitioners, the Court is constrained to observe, have sought to set up a case on the basis of documents which are of doubtful authenticity to say the very least. The case that the power of renewal had been exercised is based on no cogent foundation. The case is not capable of even prima facie acceptance and must be therefore rejected.

19. The contention that the renewal of lease must be implied as a result of the acceptance by the State of rent after 31st October, 1985 is only to be stated to be rejected. The provisions of Article 299(1) of the Constitution are mandatory in character. In Mulamchand v. State of Madhya Pradesh (AIR 1968 SC 1218), the Supreme Court has held that a contravention of the provisions of Article 299(1) nullifies a contract and would make it void. There is no question of estoppel or ratification in such a case and that is because Article 299(1) is not a matter of mere form, but

has been enacted for safeguarding the Government against unauthorized contracts. These formalities cannot be waived or dispensed with. If the plea of estoppel or ratification were to be accepted, it would mean the repeal of an important constitutional provision intended for the protection of the general public. In K. P. Chowdhry v. State of Madhya Pradesh (AIR 1967 SC 203), a Constitution Bench of the Supreme Court held that there can be no implied contract between the Government and any other person, in view of Article 299(1) of the Constitution, for if such a plea is allowed that would render Article 299 useless. In such a case a person who had a contract with the Government which was not executed at all in the manner provided, could get away by saying that an implied contract can be inferred on the facts and circumstances of a particular case. This, the Supreme Court held, cannot be countenanced.

20. The Petitioners have come before the Court with a specific averment that Petitioner No.6 has under a Deed of assignment dated 19th January, 1988 obtained an assignment of the right, title and

interest of Petitioners 1 to 5. In the affidavit in reply of Respondent No.48, the attention of the Court has been drawn to a suppression of material facts by the Petitioners. The Petition has been signed and verified by T. Mathew, a Director of Petitioner No.6 and as Constituted Attorney for Petitioners 1 to 5. T. Mathew and his wife Gracy Mathew were trustees of Mariamma Medical Trust, a public trust registered under the provisions of the Bombay Public Trust, 1950. T. Mathew and his wife in their capacity as trustees of this trust and as owners inter alia of C.S. No.67 instituted Suit No.2174 of 1986 on the Original Side of this Court inter alia against the Municipal Corporation in which they claimed under a Deed of assignment dated 31st July, 1984 entered into between the First Petitioner herein and four others as heirs of Ramkrishna Dalmia. On 17th June, 1987 a certificate was issued under Section 269 UL (3) of the Income Tax Act, 1961 in favour of Mariamma Medical Trust. Respondent No.48 is stated to have filed a declaratory suit in the Small Causes Court (R.A.D. Suit 2371 of 1988) in which on 29th January, 1993 an application for impleadment was moved by Petitioner No.6. That application was

dismissed on 21st September, 1995. These facts have been suppressed from the Court in the petition as originally filed. In the reply to the affidavit filed by Respondent No.48 it has been sought to be explained that initially negotiations took place between Petitioners 1 to 5 and Mr.T.Mathew on the basis of which 'broad articles of agreement' were executed between Petitioners 1 to 5 and Petitioner No.6. As Petitioner No.6 was not in a position to raise funds, Mariamma Medical Trust started taking steps to get the requisite permission from the Income Tax authorities. An agreement dated 31st July, 1984 was executed between Petitioners 1 to 5 and Mariamma Medical Trust. The Appropriate Authority under the Income Tax Act granted its permission on 17th June, 1987. The Trust, it is stated, was unable to raise the required funds upon which an intimation was furnished to the Income Tax Department on 15th December, 1987 and a fresh application was filed for the grant of permission in favour of Petitioner No.6. These are facts which, in my view, it was necessary for the Petitioners to place before the Court when the petition came to be filed. For reasons best known to the Petitioners, these were not disclosed. It

was only after an affidavit was filed by Respondent No.48 that an explanation has now been sought to be tendered.

21. In sum and substance, therefore, upon hearing the learned counsel appearing on behalf of the parties, I am of the view that upon the expiry of the term of lease on 31st October, 1985, there was no subsisting right, title and interest in favour of the assignee that could be assigned to Petitioner No.6. The Deed of 19th June, 1988 cannot operate to confer any rights upon Petitioner No.6 because by that day the rights of Petitioners 1 to 5 as heirs of the original assignee had come to an end. There is absolutely no evidence or material to indicate the exercise of the right of renewal prior to 31st October, 1985.

22. Some effort has been made on behalf of the Petitioners to contend that the order passed by the Collector was without affording to the Petitioners an opportunity of a personal hearing and must, therefore, be quashed and set aside. It has been urged that a breach of the principles of natural justice before the Collector cannot be remedied by

the opportunity of being heard that was granted to the Petitioners in appeal and in revision.

23. There is no merit in the submission. First and foremost, it must be noted that this is not a case where it is even alleged that the Petitioners were not given an opportunity of making a representation in response to the notice to show cause. Clearly such an opportunity was provided. Petitioners 1 to 5 did not avail of that opportunity since they did not submit a reply. A reply was submitted only by Petitioner No.6. Secondly, natural justice does not postulate in every case the requirement of a personal hearing. In Madhya Pradesh Industries Limited v. Union of India (AIR 1966 SC 671), Mr. Justice K.Subba Rao (as the learned Chief Justice then was), while construing the provisions of Rule 55 of the Mineral Concession Rules 1960 held thus :

> "It is no doubt a principle of natural justice that a quasi judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, R. 55 of the Rules, quoted

> supra, recognizes the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal. The facts of the present case disclose that a written representation would effectively meet the requirements of the principles of natural justice."
> (emphasis supplied).

24. The same view was reiterated in a subsequent decision of three Learned Judges of the Supreme Court in Rangnath v. Daulatrao (AIR 1975 SC 2146), which arose under the Hyderabad Abolition of Inams and Cash Grants Act,1954. The Supreme Court held that it was not necessary for the State Government

to give a personal hearing to the appellant or to his authorised representative before the disposal of the appeal.

25. Thirdly, in the present case, in the reply which was filed on behalf of Petitioner No.6, what was sought to be urged was a three fold submission: (i) That with reference to Clause 2(c) of the lease deed, no prior permission for the transaction was required from the State Government; (ii) That the original lessor had applied for an *extension* of the lease; and (iii) That the lease must be deemed to have been renewed after it expired by the afflux of time. No complicated question of fact arose before the authority on the basis of this defence. There was not even an averment to the effect that the lease was sought to be renewed by the exercise of the power of renewal on a particular date. Neither in the writ petition nor in the course of the hearing before the Court has any effort been made to submit or establish that any prejudice has been caused on account of the denial of a personal hearing. Against the order passed by the Collector, a writ petition was moved before this Court and as already noted earlier, that petition

was withdrawn with liberty to file an appeal under Section 247 of the Maharashtra Land Revenue Code. The submissions which have been urged on behalf of the Petitioners have been considered both by the appellate and the revisional authority before whom an opportunity of a personal hearing has been given to the Petitioners. In the circumstances, absolutely no prejudice is shown to have been caused by the denial of a personal hearing to the Petitioners before the Collector. In the facts of this case, the principles of natural justice have not been violated. A sufficient opportunity has been given to the Petitioners for submitting their representation in response to the show cause notice, which opportunity was availed of by Petitioner No.6. The nature of the defence was not such as would warrant an enquiry into complicated questions of fact or an enquiry of a nature which would warrant a personal hearing. The submission must, therefore, be rejected.

26. In these circumstances, I am of the view that the relief which has been sought on behalf of the Petitioners cannot be granted. There can be no doubt about the principle of law that an enquiry

under Section 53 of the Maharashtra Land Revenue Code, 1966 is of a summary nature. However, in a case such as the present, the Petitioners and more particularly, Petitioner No.6 have not even a shred of a right, title or interest in respect of the land in question. Hence, no mandamus for the execution of a deed of lease can be granted as sought. In fairness, it must be stated that during the course of the hearing, counsel for the Petitioners in Writ Petition 657 of 2002 has stated that the aforesaid petition is accordingly not pressed since the Petitioners would pursue such remedies as are open in law. In the circumstances, Writ Petition 1832 of 2000 shall stand dismissed. Writ Petition 657 of 2002 is disposed of as not pressed in the light of the statement made before the Court by the learned counsel.

There shall be no order as to costs.